

**Introduced by Senator Negrete McLeod**

February 27, 2009

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An act to amend Section 143 of the Streets and Highways Code, relating to transportation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 528, as introduced, Negrete McLeod. Toll facilities: comprehensive development lease agreements.

Existing law authorizes the Department of Transportation and regional transportation agencies, as defined, until January 1, 2012, to enter into comprehensive development lease agreements with public and private entities, or consortia of those entities, for certain transportation projects that may charge users of those projects tolls and user fees, subject to various terms and conditions. Existing law limits the number of projects authorized pursuant to these provisions to 2 in northern California and 2 in southern California. Existing law provides that a lease agreement may provide for reasonable compensation to the leaseholder for the adverse effects on toll or user fee revenue due to competing transportation projects that may be undertaken, as specified.

This bill would prohibit a lease agreement entered into on or after January 1, 2010, from providing for compensation for adverse effects of competing projects.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 143 of the Streets and Highways Code  
2     is amended to read:

1 143. (a) (1) “Regional transportation agency” means any of  
2 the following:

3 (A) A transportation planning agency as defined in Section  
4 29532 or 29532.1 of the Government Code.

5 (B) A county transportation commission as defined in Section  
6 130050, 130050.1, or 130050.2 of the Public Utilities Code.

7 (C) Any other local or regional transportation entity that is  
8 designated by statute as a regional transportation agency.

9 (D) A joint exercise of powers authority as defined in Chapter  
10 5 (commencing with Section 6500) of Division 7 of Title 1 of the  
11 Government Code, with the consent of a transportation planning  
12 agency or a county transportation commission for the jurisdiction  
13 in which the transportation project will be developed.

14 (2) “Transportation project” means one or more of the following:  
15 planning, design, development, finance, construction,  
16 reconstruction, rehabilitation, improvement, acquisition, lease,  
17 operation, or maintenance of highway, public street, rail, or related  
18 facilities supplemental to existing facilities currently owned and  
19 operated by the department or regional transportation agencies  
20 that is consistent with the requirements of paragraph (2) of  
21 subdivision (b).

22 (b) (1) Notwithstanding any other provision of law, only the  
23 department, in cooperation with regional transportation agencies,  
24 and regional transportation agencies, may solicit proposals, accept  
25 unsolicited proposals, negotiate, and enter into comprehensive  
26 development lease agreements with public or private entities, or  
27 consortia thereof, for transportation projects.

28 (2) The number of projects authorized pursuant to this section  
29 shall be limited to two projects in northern California and two  
30 projects in southern California. The California Transportation  
31 Commission shall select the candidate projects from projects  
32 nominated by the department or a regional transportation agency.  
33 No fewer than two of the selected projects shall be nominated by  
34 a regional transportation agency. The projects shall be primarily  
35 designed to improve goods movement, including, but not limited  
36 to, exclusive truck lanes and rail access and operational  
37 improvements. The projects shall address a known forecast  
38 demand, as determined by the department or regional transportation  
39 agency.

1 (3) All negotiated lease agreements shall be submitted to the  
2 Legislature for approval or rejection. Prior to submitting a lease  
3 agreement to the Legislature, the department or regional  
4 transportation agency shall conduct at least one public hearing at  
5 a location at or near the proposed facility for purposes of receiving  
6 public comment on the lease agreement. Public comments made  
7 during this hearing shall be submitted to the Legislature with the  
8 lease agreement. Unless the Legislature passes a resolution, with  
9 both houses concurring, rejecting a negotiated lease agreement  
10 within 60 legislative days of the agreement being submitted to it,  
11 the agreement shall be deemed approved. A lease agreement may  
12 not be amended by the Legislature.

13 (c) For the purpose of facilitating those projects, the agreements  
14 between the parties may include provisions for the lease of  
15 rights-of-way in, and airspace over or under, highways, public  
16 streets, rail, or related facilities for the granting of necessary  
17 easements, and for the issuance of permits or other authorizations  
18 to enable the construction of transportation projects. Facilities  
19 subject to an agreement under this section shall, at all times, be  
20 owned by the department or the regional transportation agency,  
21 as appropriate. For department projects, the commission shall  
22 certify the department's determination of the useful life of the  
23 project in establishing the lease agreement terms. In consideration  
24 therefor, the agreement shall provide for complete reversion of the  
25 leased facility, together with the right to collect tolls and user fees,  
26 to the department or regional transportation agency, at the  
27 expiration of the lease at no charge to the department or regional  
28 transportation agency. At time of the reversion, the facility shall  
29 be delivered to the department or regional transportation agency,  
30 as applicable, in a condition that meets the performance and  
31 maintenance standards established by the department and that is  
32 free of any encumbrance, lien, or other claims.

33 (d) (1) The department or a regional transportation agency may  
34 exercise any power possessed by it with respect to transportation  
35 projects to facilitate the transportation projects pursuant to this  
36 section. The department, regional transportation agency, and other  
37 state or local agencies may provide services to the contracting  
38 entity for which the public entity is reimbursed, including, but not  
39 limited to, planning, environmental planning, environmental  
40 certification, environmental review, preliminary design, design,

1 right-of-way acquisition, construction, maintenance, and policing  
2 of these transportation projects. The department or regional  
3 transportation agency, as applicable, shall regularly inspect the  
4 facility and require the lessee to maintain and operate the facility  
5 according to adopted standards. The lessee shall be responsible  
6 for all costs due to development, maintenance, repair, rehabilitation,  
7 and reconstruction, and operating costs.

8 (2) In selecting private entities with which to enter into these  
9 agreements, notwithstanding any other provision of law, the  
10 department and regional transportation agencies may utilize, but  
11 are not limited to utilizing, one or more of the following  
12 procurement approaches:

13 (A) Solicitations of proposals for defined projects and calls for  
14 project proposals within defined parameters.

15 (B) Prequalification and short-listing of proposers prior to final  
16 evaluation of proposals.

17 (C) Final evaluation of proposals based on qualifications, best  
18 value, or both. If final evaluation is to be based on best value, the  
19 California Transportation Commission shall develop and adopt  
20 criteria for making that evaluation prior to evaluation of a proposal.

21 (D) Negotiations with proposers prior to award.

22 (E) Acceptance of unsolicited proposals, with issuance of  
23 requests for competing proposals.

24 (3) No agreement entered into pursuant to this section shall  
25 infringe on the authority of the department or a regional  
26 transportation agency to develop, maintain, repair, rehabilitate,  
27 operate, or lease any transportation project. Lease agreements  
28 *entered into on or after January 1, 2010*, may *not* provide for  
29 reasonable compensation to the leaseholder for the adverse effects  
30 on toll revenue or user fee revenue due to the development,  
31 operation, or lease of supplemental transportation projects ~~with~~  
32 ~~the exception of any of the following:~~

33 ~~(A) Projects identified in regional transportation plans prepared~~  
34 ~~pursuant to Section 65080 of the Government Code and submitted~~  
35 ~~to the commission as of the date the commission selected the~~  
36 ~~project to be developed through a lease agreement, as provided in~~  
37 ~~this section, unless provided by the lease agreement approved by~~  
38 ~~the department or regional transportation agency and the~~  
39 ~~commission.~~

40 ~~(B) Safety projects.~~

1     ~~(C) Improvement projects that will result in incidental capacity~~  
2     ~~increases.~~

3     ~~(D) Additional high-occupancy vehicle lanes or the conversion~~  
4     ~~of existing lanes to high-occupancy vehicle lanes.~~

5     ~~(E) Projects located outside the boundaries of a public-private~~  
6     ~~partnership project, to be defined by the lease agreement.~~

7     ~~However, compensation to a leaseholder shall only be made~~  
8     ~~after a demonstrable reduction in use of the facility resulting in~~  
9     ~~reduced toll or user fee revenues, and may not exceed the reduction~~  
10    ~~in those revenues.~~

11    (e) (1) Agreements entered into pursuant to this section shall  
12    authorize the contracting entity to impose tolls and user fees for  
13    use of a facility constructed by it, and shall require that over the  
14    term of the lease the toll revenues and user fees be applied to  
15    payment of the capital outlay costs for the project, the costs  
16    associated with operations, toll and user fee collection,  
17    administration of the facility, reimbursement to the department or  
18    other governmental entity for the costs of services to develop and  
19    maintain the project, police services, and a reasonable return on  
20    investment. The agreement shall require that, notwithstanding  
21    Sections 164, 188, and 188.1, any excess toll or user fee revenue  
22    either be applied to any indebtedness incurred by the contracting  
23    entity with respect to the project, improvements to the project, or  
24    be paid into the State Highway Account, or for all three purposes,  
25    except that any excess toll revenue under a lease agreement with  
26    a regional transportation agency may be paid to the regional  
27    transportation agency for use in improving public transportation  
28    in and near the project boundaries.

29    (2) Lease agreements shall establish specific toll or user fee  
30    rates. Any proposed increase in those rates during the term of the  
31    agreement shall first be approved by the department or regional  
32    transportation agency after at least one public hearing conducted  
33    at a location near the proposed or existing facility.

34    (3) The collection of tolls and user fees for the use of these  
35    facilities may be extended by the commission or regional  
36    transportation agency at the expiration of the lease agreement.  
37    However, those tolls or user fees may not be used for any purpose  
38    other than for the improvement, continued operation, or  
39    maintenance of the facility.

1 (4) Tolls and user fees may not be charged to noncommercial  
2 vehicles with three or fewer axles.

3 (f) The plans and specifications for each transportation project  
4 developed, maintained, repaired, rehabilitated, reconstructed, or  
5 operated pursuant to this section shall comply with the  
6 department's standards for state transportation projects. The lease  
7 agreement shall include performance standards, including, but not  
8 limited to, levels of service. The agreement shall require facilities  
9 on the state highway system to meet all requirements for noise  
10 mitigation, landscaping, pollution control, and safety that otherwise  
11 would apply if the department were designing, building, and  
12 operating the facility. If a facility is on the state highway system,  
13 the facility leased pursuant to this section shall, during the term  
14 of the lease, be deemed to be a part of the state highway system  
15 for purposes of identification, maintenance, enforcement of traffic  
16 laws, and for the purposes of Division 3.6 (commencing with  
17 Section 810) of Title 1 of the Government Code.

18 (g) Failure to comply with the lease agreement in any significant  
19 manner shall constitute a default under the agreement and the  
20 department or the regional transportation agency, as appropriate,  
21 shall have the option to initiate processes to revert the facility to  
22 the public agency.

23 (h) The assignment authorized by subdivision (c) of Section  
24 130240 of the Public Utilities Code is consistent with this section.

25 (i) A lease to a private entity pursuant to this section is deemed  
26 to be public property for a public purpose and exempt from  
27 leasehold, real property, and ad valorem taxation, except for the  
28 use, if any, of that property for ancillary commercial purposes.

29 (j) Nothing in this section is intended to infringe on the authority  
30 to develop high-occupancy toll lanes pursuant to Section 149.4,  
31 149.5, or 149.6.

32 (k) Nothing in this section shall be construed to allow the  
33 conversion of any existing nontoll or nonuser-fee lanes into tolled  
34 or user fee lanes with the exception of a high-occupancy vehicle  
35 lane that may be operated as a high-occupancy toll lane for vehicles  
36 not otherwise meeting the requirements for use of that lane.

37 (l) The lease agreement shall require the lessee to provide any  
38 information or data requested by the California Transportation  
39 Commission or the Legislative Analyst. The commission, in  
40 cooperation with the Legislative Analyst, shall annually prepare

1 a report on the progress of each project and ultimately on the  
2 operation of the resulting facility. The report shall include, but not  
3 be limited to, a review of the performance standards, a financial  
4 analysis, and any concerns or recommendations for changes in the  
5 future.

6 (m) No lease agreements may be entered into under this section  
7 on or after January 1, 2012.

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